

Wicked Bandwidth Services Agreement.

This Services Agreement (this "Agreement") is made and entered into this ___ day of _____, _____ (the "Effective Date") by and between Wicked Bandwidth, Inc., a Delaware corporation ("WBI"), and _____, a _____ ("Customer"), located at _____ (the "Premises") for the purpose of providing all data, telecommunications and related services ("Services") as outlined in the Service Order.

1. Service Term

This Agreement is effective as of the Effective Date and will continue for the term as set forth in the Service Order (the "Service Term"). This Agreement will automatically renew for successive one-year periods, unless either party gives written notice to the other party of non-renewal at least thirty (30) days prior to the end of the applicable term. WBI may terminate this Agreement upon Customer Default (as defined below).

2. Obligations of WBI

- a. *Installation.* WBI shall use reasonable efforts to install the equipment necessary for the Services as quickly as possible and not to disturb the quiet use of the Premises. The installation shall be performed in a good and workmanlike manner consistent with generally accepted installation and construction standards.
- b. *Services.* WBI will exercise reasonable care to ensure no delay or failure of Services beyond WBI's control. WBI shall comply with all applicable law governing the Services and any work or other activities undertaken by or for WBI on the Premises. WBI's Service Level Agreement (the "SLA"), attached hereto as Addendum A, outlines the availability service level and related Customer rights.
- c. *WBI's Equipment.* WBI will maintain all equipment provided in good condition, and will be responsible for the maintenance and repair of the equipment, unless it is damaged by Customer.
- d. *Warranties.* Except as expressly outlined in this Agreement and the SLA, WBI disclaims all warranties whether express or implied including without limitation the implied warranty of merchantability and fitness for a particular purpose.

3. Responsibilities of Customer

- a. *Credit Check.* Customer authorizes WBI to contact credit-reporting agencies for Customer's credit information. Based on Customer's credit rating, WBI may require Customer to submit an initial deposit or advance payment. If Customer increases Services, is late on payment, or Customer's credit rating changes, WBI may require an increased deposit at that time. WBI will return any requested deposit if satisfactory credit has been established or if this Agreement terminated (except that the deposit may be applied to any unpaid amount due by Customer in WBI's sole discretion).
- b. *Payment.* Customer is responsible for paying all charges related to the Services, as outlined in the Service Order. Payments are due within thirty (30) days of receipt of an invoice for the Services. Any amounts due under this Agreement or the Service Order not received in such time period, in addition to other remedies available hereunder, are subject to a late payment charge of 1.5% per month. Failure to pay any amount when due shall constitute sufficient cause for WBI to terminate this Agreement.
- c. *Access.* Customer shall provide WBI with reasonable access to install, repair and maintain all equipment provided and installed by WBI for the providing of the Services. In the event Customer moves to new location, Customer will promptly notify WBI of a change in address and if applicable, coordinate with WBI for the providing of Services at the new location. If WBI's Service is unavailable in the new location, Customer will be responsible for any fees associated with terminating the Services.
- d. *WBI's Equipment.* Customer agrees and acknowledges that all equipment provided and installed by WBI remains the property of WBI. In the event WBI's equipment is damaged by Customer, Customer agrees to reimburse WBI for the cost of necessary repairs or replacement.

- e. **Use.** Customer shall use the Services only in accordance with applicable laws, regulations and rules. Customer agrees that it has obtained all approvals, consents and authorizations necessary to conduct business through the Services.
 - f. **Customer Default.** Customer will be deemed to be in Customer Default if Customer (a) fails to make a payment pursuant to Section 3(b) and does not cure that failure for seven (7) business days; (b) fails to perform or observe any material term in this Agreement; (c) terminates Services prior to the end of the Service Term; or (d) uses the Services for an unlawful purpose or in an unlawful manner.
 - g. **Remedies.** In the event of a Customer Default, WBI shall have the right to terminate the Services, at which time the remaining Monthly Recurring Charges and Non-Recurring Charges under the Service Order shall become immediately due. In the event WBI fails to provide the Services in a manner as outlined in the SLA due to a "Chronic Outage," the Customer may elect to terminate Services without liability.
 - h. **Taxes.** Customer agrees to pay, and indemnify WBI from any related liability, for any taxes, fees, surcharges, or other charges that are asserted against WBI for Customer's use by any state, local, national, international, public or non-public government entity.
 - i. **Disconnection of Current Provider.** Customer agrees to be solely responsible for the disconnection of the services with its current service provider and understands WBI is not responsible for any charges assessed by the current provider for disconnection or termination.
4. **In the Event of an Outage or Problem**
- a. **Notification.** In the event of planned or anticipated outage, WBI shall notify Customer as soon as practicable. In the event of an unexpected outage, Customer shall notify WBI as soon as practicable to inform WBI of the outage.
 - b. **Outage Credits.** Customer will receive a credit as set forth on WBI's SLA based on the cumulative unavailability of the Services.
 - c. **Force Majeure.** WBI shall be excused from and shall have no liability with respect to any delay or failure to perform hereunder caused by any event beyond WBI's reasonable control.
5. **Mutual Obligations**
- a. **Limited Liability.** WBI and Customer agree that in the event of a breach of this Agreement or failure of the Services, other than the remedies set forth in this Agreement or the SLA, neither party shall be liable for any direct, indirect, consequential, special, actual, incidental, punitive, or any other damages, or for any lost profits of any kind or nature even if the party has been advised of the possibility of such damage or loss.
 - b. **Indemnity.** WBI and Customer agree to defend, indemnify and hold harmless the other (including officers, directors, members, stockholders, employees, contractors and agents of the other) from and against: (1) any and all claims for damage to tangible property or bodily injury, including claims for wrongful death, to the extent that such claim arises out of the negligence or wrongful misconduct of the respective indemnifying party, its employees, agents, or contractors in connection with this Agreement or the provision of Services; and (2) any loss, judgment or settlement of any nature or kind, arising under this Agreement or the Services provided hereunder.
 - c. **Assignment.** Customer will not assign this Agreement without the written consent of WBI, which shall be based upon a satisfactory credit check of the potential assignee.
 - d. **Amendment, Waiver, etc.** WBI and Customer each agree: (1) that the provisions of this Agreement may only be amended by the written consent of both parties and that the provisions are for the benefit only of WBI and Customer; (2) that if any term or provision of this Agreement is determined to be invalid or unenforceable, then this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable and the remainder of this Agreement shall be valid and enforceable; (3) failing to enforce any provision of the Agreement shall not constitute the permanent waiver of such provision or any other provision; and (4) this Agreement, the Service Order and the SLA constitute the complete and exclusive statement of the understanding between the parties and supersedes all proposals and prior agreements (oral or written) between the parties relating to the content of this Agreement and the Services.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

[Customer]

WICKED BANDWIDTH, INC.

By _____
Name:
Title:
Address:

By: _____
Name:
Title:
Address:

ADDENDUM A

[Service Level Agreement]